Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
A National Broadband Plan For Our Future	)	GN Docket No. 09-51
	)	

REPLY COMMENTS OF THE GENERAL ELECTRIC COMPANY

Pursuant to Section 1.405 of the Commission's Rules, the General Electric Company ("GE") hereby files its reply comments in response to the Commission's Further Notice of Proposed Rulemaking in the above referenced matter.[1]

I. Introduction

GE's Digital Energy business is a global leader in protection and control, communications, power sensing and power quality solutions. Its products and services increase the reliability of electrical power networks and critical equipment for utility, industrial and large commercial customers. From protecting and optimizing assets such as generators, transmission lines and motors, to ensuring secure wireless data transmission and providing uninterruptible power, GE's Digital Energy business delivers industry-leading technologies to solve the unique challenges of each customer.

GE's reply comments focus exclusively on the Commission's consideration to exercise permissive authority over machine-to-machine communications, such as smart meter/smart grids, for the purpose of broadening the contribution base of services subject to the Universal Service Fund ("USF") assessment.[2]

II. Reply Comments

[1] *Universal Service Contribution Methodology*, WC Docket No. 06-122; *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 12-69, 2012 WL 982738 (rel. Mar. 12, 2012) (*Notice*); Further Notice of Proposed Rulemaking, FCC 12-46 (rel. Apr. 30, 2012) (*Further Notice*).

[2] *Further Notice* at ¶87.

GE concurs with the reply comments submitted by the Utilities Telecom Council ("UTC") and opposes USF assessments on machine-to-machine communications, including smart meter/smart grids.[3] In response to the Commission's question of how such assessments would impact marketplace innovation, GE further notes that USF assessments would have a chilling effect on future smart meter/smart grid investments, thereby discouraging innovation in these technologies. Specifically, assessments would introduce new uncertainties into the costs of smart meter/smart grid deployments and frustrate the efforts of utilities to present clear and consistent business cases to regulators during prudence reviews and other judicial proceedings. Moreover, as UTC notes, USF assessments would likely create additional opposition to smart meters if those incremental costs are borne by ratepayers.[4] Lastly, USF assessments would impose new costs on existing smart meter/smart grid deployment, thereby creating a cost allocation and cost recovery dilemma for utilities and their regulators. Collectively, the adverse impacts to smart meter/smart grid investments will stifle innovation, undermine national policy objectives that support the modernization of the nation's electricity transmission and distribution system, and conflict with the Commission's prior acknowledgment of smart grid as a national priority.[5]

III. Conclusion

GE appreciates the opportunity to file reply comments.

Respectfully submitted this 6th day of August 2012,

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[3] *Reply Comments of the Utilities Telecom Council* (Aug. 6, 2012), attached.

[4] Id. at page 7.

[5] *See* Energy Independence and Security Act of 2007 (EISA), Pub. L. No. 110-140, 121 Stat. 1492, 1783-84 (codified at 42 U.S.C. § 17381) (containing a policy statement on United States' grid modernization that defines "smart grid"). *See also* National Broadband Plan: Connecting America (Chapter 12: Energy and the Environment)

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REPLY COMMENTS OF THE UTILITIES TELECOM COUNCIL

Pursuant to Section 1.405 of the Commission's Rules, the Utilities Telecom Council ("UTC") hereby files its reply comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced matter.[1]

While UTC supports the Commission's goal of reforming the universal service fund (USF) to make it fair, efficient and sustainable, it opposes assessments on machine-to-machine communications, including smart meters/smart grid devices. UTC understands the financial pressures that the USF is facing, but machine-to-machine communications do not in any way contribute to the problem.[2] The Commission's focus should be on services that actually do compete with traditional interstate telecommunications, such as broadband internet access, and perhaps those services should rightfully be assessed in order to expand the base of contributions, particularly given that they are now eligible to receive USF subsidies.[3]

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[1] *Universal Service Contribution Methodology; A National Broadband Plan for Our Future*, Further Notice of Proposed Rulemaking, WC Docket No. 06-122, GN Docket No. 09-51, 27 FCC Rcd 5357 (2012) ("Further Notice").

[2] *See also* Comments of Onstar at 18 (arguing that telematics should not be required to contribute to USF because telematics is not responsible for the strain on the current USF contribution system.)

[3] *Id., citing Further Notice* at ¶18 (arguing that the complications in the USF contribution methodologies has been driven largely by the dramatic increase in mobile devices, interconnected VoIP service, and the increasing bundling of services).

While UTC takes no position on whether or the extent to which such services should be assessed, it can see how assessing *those* services *could* substantially support the USF and could, do so, perhaps, *without* imposing a substantial burden.[4] Conversely, UTC strongly believes that assessing machine-to-machine communications would *not* substantially support USF and *would* impose undue economical and administrative burdens on multiple parties involved throughout the M2M chain. Moreover, USF fees on machine-to-machine communications and smart grid devices, including smart meters, would be discriminatory and would violate Section 254(d) of the Communications Act, particularly under a numbers-based or connections-based contribution methodology, because smart meters/smart grid devices would bear "inequitable contribution obligations" that would exceed interstate revenues.[5] Finally, as a policy matter, the Commission should exclude machine-to-machine communications, including smart meters/smart grid devices, because assessing such services would stunt the growth of this nascent industry, which will promote various overriding national policy objectives and has the prospect to create jobs.

Introduction

UTC is the international association for the telecommunications and information technology interests of electric, gas and water utilities, pipeline companies and other critical

[4] UTC cautions the Commission that, to the extent that the USF burden is increased upon or expanded to services properly determined to be interstate telecommunications services, that cost will almost certainly be passed through by commercial providers to utilities when they purchase interstate telecommunications services, which could have consequences that have not be explored for long term utility network investment.

[5] *High-Cost Universal Service Support*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 05-337, 24 FCC Rcd. 6475, 6552 ¶130 (2008)("High Cost Order on Remand")(declining to adopt a numbers-based contribution methodology on business services). *See also Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999), *citing, Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)(holding that it is arbitrary and capricious for the Commission to impose prohibitive costs that require contributors to contribute more in universal service payments than they will generate from interstate service; and finding that it is discriminatory to impose fees that harm some contributors more than others.) Note that there are no interstate revenues associated with smart meters and smart grids. *See also* Comments of Onstar, LLC at 6-18 (filed Jul. 6, 2012) and Comments of the Alliance of Automobile Manufacturers, Inc. at 3-6 (filed Jul. 9, 2012)(opposing a numbers-based and connections-based contribution methodology which would impose onerous and discriminatory fees on M2M and telematics.)

infrastructure industries (CII). UTC's members own, manage, and control extensive private internal communications systems that they use to support the safe, reliable and efficient delivery of essential electric, gas and water services to the public at large. These systems include wired and wireless communications networks that are utilized to support a variety of utility applications, such as smart grid, and other CII applications. Owing to the critical nature of the underlying services that these systems support, utility and CII communications systems are designed, built, and operated to standards that often exceed those followed by commercial service providers.

Utilities and CII need extremely reliable communications and depend upon private internal communications networks to support mission critical operations. Some utilities and CII will use commercial communications systems to support some applications, however. UTC's members have a direct and tangible interest in this proceeding, primarily due to the significant and negative impact that it would have on the smart grid by deterring and delaying the deployment of smart grid devices in the future, thereby frustrating the policy goal of advanced energy services. Therefore, UTC is pleased to file its reply comments on the Further Notice.

I. The Commission Should Exclude Smart Meters/Smart Grid from Assessable Services Under USF.

The Commission asks whether it should exclude machine-to-machine services or whether it should exercise permissive authority over machine-to-machine communications, such as smart meter/smart grid devices.[6] More specifically, it questions whether machine-to-machine communications can even be considered "telecommunications" and if so, whether all machine-to-machine communications over the Internet should be treated as "interstate telecommunications".[7] Implicit in the question of

[6] *Further Notice* at ¶87.

[7] *Id.*

whether machine-to-machine communications may be treated as "telecommunications" is the question of who should be treated as the "user" who controls the transmissions and chooses the content.[8] Finally, the Commission asks how assessing machine-to-machine communications would impact marketplace innovation in this arena.[9]

The Commission should exclude machine to machine communications, including smart meters/smart grid devices from the contribution base of services that would be subject to USF. These communications are not "telecommunications," and they are not necessarily even interstate in nature such that they could be conceivably subject to Section 254(d). Moreover, they are not substitutes for interstate telecommunications services, meaning that the Commission should exercise its permissive authority and make them assessable. To the contrary, there are overriding policy reasons why the Commission should refrain from assessing machine-to-machine communications and smart meters/smart grid devices from USF contributions.

A. Machine-to-machine communications and smart meters/smart grid devices are not "interstate telecommunications services" that are subject to mandatory contributions under the statute.

Machine-to-machine communications generally and smart meters/smart grid devices specifically are not "telecommunications" because the transmissions are not necessarily between or among points specified by the user; nor is the information necessarily of the user's choosing without change in the form or content. Instead, most -- if not all -- of the transmissions occur automatically or are broadcast to devices across the system.[10] Only a relatively small percentage

[8] The statutory term "telecommunications" is defined as the "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

[9] *Id.*

[10] *See also Implementation of Sections 716 and 717 of the Communications Act of 1934, As Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Notice of Proposed Rulemaking, 26 FCC Rcd. 3133, 3146-47 ¶34 n. 91 (2011)("unlike person-to-person or person-to-machine interactions, machine-to-machine interactions are processes where the communications occur solely between two or more machines, and no human

of transmissions are targeted between or among specific points specified by the user. In addition, the information that is sent between devices may change in form or content as it is routed over the system, depending on the system design and the type of application. For example, a smart meter system may change the form of data from Internet protocol (IP) to Zigbee protocol and vice versa. Similarly, many smart grid systems employ MPLS to convert data from various disparate parts of the system into a common protocol.[11] As such, machine-to-machine communications and smart meters/smart grid devices are not "telecommunications" as defined under Section 254(d).

Even if they could be considered telecommunications, machine-to-machine communications generally and smart meters/smart grid devices specifically are not necessarily interstate in nature. While major utilities do have multi-state service territories, the smart grid systems that are deployed tend to follow state jurisdictional boundaries, due to the fact that these major utilities are primarily regulated at the state level. Moreover, there are far more municipal and cooperative utilities that typically have intrastate service territories, and consequently, their smart meters/smart grids transmissions would be intrastate as well.

Finally, smart meters/smart grid devices operate largely on stand-alone private internal networks. Some utilities use commercial services to support some applications, and some utilities allow customers to access smart meter data and control their in-home devices via the

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intervention is involved as these systems operate automatically.) A*nd see* FCC Chairman Julius Genachowski Prepared Remarks to International CTIA Wireless 2012, New Orleans, LA (May 8, 2012)(recognizing that "[d]evices connected to devices, machines to machines, transmit[] information automatically.")

[11] Note that the question of whether MPLS and other enterprise services should be subject to USF contributions is part of the *Further Notice* at ¶¶42-45.

Internet.[12] But, the vast majority of smart meters/smart grid devices rely on private internal communications networks for most, if not all, of the utility applications that they support. Therefore, at least with respect to smart meters/smart grid devices, the Commission should not conclude that they include interstate telecommunications by virtue of any marginal connection with the Internet and/or commercial service providers.[13] As such, machine-to-machine communications and smart meters/smart grid devices are not interstate telecommunications services, and a utility should not be treated like a telecommunications carrier that is a "mandatory contributor to the Fund."[14]

B. The Commission should not exercise its permissive authority to include machine-to-machine communications and smart meters/smart grid devices in the USF contribution base.

The Commission should not exercise its permissive authority to include machine-to-machine communications and smart meters/smart grid devices in the USF tax base. Instead, it should exclude machine-to-machine communications generally and smart meters/smart grid devices specifically. The Commission's permissive authority extends to "any… provider of interstate telecommunications… if the public interest so requires."[15] As explained below, providers of smart meters/smart grid devices fail to meet this two-part statutory test because they are not providers of interstate telecommunications, and the public interest would not be served by the Commission improperly contorting its authority to include machine-to-machine communications and smart meters/smart grid devices.

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[12] Smart meter data may be made accessible via the Internet, but the network itself does not rely on the Internet for routing traffic. The smart meter data that is made available via the Internet is posted there, just like any other commercially available website.

[13] *See Further Notice* at ¶87 (asking whether the Commission should conclude that all machine-to-machine connections that transmit information over the Internet include interstate telecommunications.)

[14] *See Further Notice* at ¶31 (stating that "[E]very telecommunications carrier that provides interstate telecommunications services" is a mandatory contributor to the Fund.")

[15] 47 U.S.C. § 254(d).

1. Smart meter/ smart grid providers do not provide interstate telecommunications

As the Commission itself has stated, the "threshold issue in exercising permissive authority is whether an entity is 'providing' interstate 'telecommunications' as defined in the Act."[16] Utilities utilize smart meters/ smart grid devices to provide safe and reliable energy service. They do not provide interstate telecommunications. Smart meters/smart grid devices do not fall within the statutory definition of "telecommunications," and they generally transmit information on an intrastate basis, not interstate. Smart meter/smart grid device transmissions are not telecommunications, because transmissions are usually automatic and provide various information between or among various devices, depending on a variety of factors at any given time or circumstance. In addition, they generally transmit information on an intrastate basis, because the smart meter/smart grid system is frequently located (and thus regulated) in one state. Moreover, smart meters/smart grids tend to rely on private internal networks, rather than the Internet, and so the Commission may not presume that they are interstate based upon the use of the Internet.[17] Therefore, utilities with smart meters/smart grid devices are not providers of interstate telecommunications.

2. The public interest would not be served by assessing smart meters/smart grid devices for USF contributions.

In addition, the public interest would not be served by assessing USF contributions on machine-to-machine communications and smart meters/smart grid devices. The assessment of USF on smart meters/smart grid devices would drive up costs, thereby undermining the business case for utilities to deploy these systems. As of May 2012, there are 36 million smart meters deployed, and it is estimated that 65 million smart meters will be deployed by 2015.[18] The aggregate costs of assessing USF

[16] *Further Notice* at ¶32.

[17] *But see Further Notice* at ¶268 (suggesting broadband Internet access service should be "presumed interstate for purposes of universal service contributions" based on any connection that connects to an Internet point of presence.)

[18] *See* Utility-Scale Smart Meter Deployments, Plans, & Proposals, Institute for Energy Efficiency at 1 (May 2012)(stating that 36 million meters have been installed and that 65 million meters will be deployed by 2015).

contributions on these smart meters would be substantial and would negatively impact utilities and, more significantly, their customers. Smart meters in particular already face opposition from some segments of the American public, and adding the cost burden of the USF to electric customers would only serve to inflame that opposition.[19] Additional, vehement opposition to device installation resulting from an increased financial burden on consumers would frustrate the national policy objective of the cost-effective deployment of smart grid technologies.[20]

The Commission has recognized that broadband-enabled machine-to-machine communications, including smart meter/smart grid devices, will promote overarching national energy and environmental policies. In its National Broadband Plan, the Commission stated that:

> Broadband-connected smart homes and businesses will be able to automatically manage lights, thermostats and appliances to simultaneously maximize comfort and minimize customer bills. New companies will emerge to help manage energy use and environmental impact over the Internet, creating industries and jobs. Televisions, computers and other devices in the home will consume just a fraction of the power they use today, drawing energy only when needed. Large data centers, built and managed to leading energy efficiency standards, will be located near affordable and clean energy sources. Finally, broadband connectivity in vehicles will power the next generation of navigation, safety, information and efficiency applications while minimizing driver distraction. Next-generation safety systems will alert drivers to hazards, helping to avoid accidents and saving lives. In the process, broadband and information and

[19] *See* Hanah Cho "Some Consumers Oppose Smart Meters in Md." (May 20, 2012) available at http://articles.baltimoresun.com/2012-05-20/business/bs-bz-smart-meters-opt-out-20120520_1_smart-meters-meter-readers-gas-meters. *See also* "U-17000 Report to the Commission", Prepared by the Staff of the Michigan Public Service Commission, at 26, Table 2 (May 2012)(documenting the status of various proceedings related to state opt-out from smart meters).

[20] *See e.g.* Energy Policy Act of 2005, Pub. L. No. 109-58, 100 Stat. 567 (codified at 1 U.S.C. §§ 900-999)(calling upon utilities to offer time-based rates with a time-of-use meter to all customer classes; requesting that state public utility commissions investigate the installation in their state of time-of-use meters and communication devices to enable time-based pricing rate schedules and other demand response programs; and mandating that, by October 2012, all federal buildings be individually metered for electricity consumption and, to the extent feasible, use advanced meters that measure energy use on an hourly basis). *See also* Energy Independence and Security Act of 2007 (EISA), Pub. L. No. 110-140, 121 Stat. 1492, 1783-84 (codified at 42 U.S.C. § 17381)(containing a policy statement on United States' grid modernization that defines "smart grid;" establishes the Smart Grid Advisory Committee, the Smart Grid Task Force, and the Smart Grid Interoperability Framework; and institutes the Smart Grid Investment Matching Grant Program, which provides a 20% match for qualifying smart grid investments.) *And see* American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, (123 Stat. 115, 516.)(authorizing the U.S. Department of Energy to provide up to $4.5 billion in financial support for smart grid demonstration projects and advanced grid technology investments, such as advanced metering initiatives.)

> communication technologies (ICT) can collectively prevent more than a billion metric tons of carbon emissions per year by 2020.[21]

Given the Commission's own recognition of the public interest benefits of smart meters/smart grid devices, the Commission should not adopt USF regulations that would frustrate their cost effective deployment.

Although the Commission has exercised its permissive authority in the past to require USF contributions from private line service providers, payphone aggregators[22], and interconnected VoIP providers,[23] in each of those cases its decision to exercise its permissive authority was primarily based upon the Commission's conclusion that these service providers substantially competed with other service providers who are mandatory contributors (e.g. interstate telecommunications service providers). By contrast, smart meter/smart grid service technologies do not compete with the services of any mandatory contributors. Instead, smart meter/smart grid technologies enable a variety of different utility applications, such as metering, demand response, and outage and fault detection, for utilities and their customers (i.e. not telecommunications customers). These utility applications are wholly different from interstate telecommunications services, as explained above.

Therefore, the Commission should not – indeed, cannot -- exercise its permissive authority in the case of smart meters/smart grid devices because such an exercise in authority cannot be justified on public interest grounds. Not only would important public policy goals in the energy arena be frustrated by the

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[21] National Broadband Plan, Chapter 12 at 1, *citing* Boston Consulting Group (BCG), Global e-Sustainability Initiative, Smart 2020: Enabling the Low Carbon Economy in the Information Age, United States report addendum (2008) (BCG, Smart 2020), *available at* http://www.smart2020.org/_assets/files/Smart2020UnitedStatesReportAddendum.pdf.

[22] *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3784, para. 71. Although payphone aggregators may not have a direct relationship with the end user, the Commission requires that payphone aggregators contribute because they directly compete with mandatory contributors and the public interest so requires. *Universal Service First Report and Order*, 12 FCC Rcd at 9184-85, para. 797 (exercising its permissive authority).

[23] The Commission determined that an immediate extension of contribution obligations to interconnected VoIP service was warranted due to the growth in demand for the Fund, the decline in the contribution base overall, and the "robust growth in subscribership" to interconnected VoIP services, from 150,000 subscribers in 2003 to 4.2 million subscribers in 2005. Id. at 7528–29, para. 19.

burden posed by USF contributions, but also no justification for such action can be made based upon the promotion of regulatory parity between competing services.

C. As a matter of statutory interpretation, utilities and CII should be treated as users of smart meters/smart grid devices, if the Commission adopts a broader definitional approach towards determining contribution obligations.

The Commission has proposed adopting a new rule with a broader definitional approach towards determining contribution obligations, which is based upon the transmission to end users rather than the underlying regulatory classification of the services involved. As the Commission explained, this new rule is "intended to encompass only entities that provide transmission to their users, whether using their own facilities or by utilizing transmission service purchased from other entities."[24] It is in this context that the Commission has asked whether it should exclude machine-to-machine communications, including smart meters/smart grids from USF contributions.[25]

If it ultimately adopts its new rule, the Commission has also asked how it should interpret certain statutory provisions, including how it should "interpret the statutory requirement that a telecommunications transmission must be 'between or among points specified by the user.'"[26] In that context, the Commission asks whether it should interpret "the user" to be a subscriber to the service in question. To illustrate the issue, the Commission poses the following example:

> [S]uppose that Bookseller A sells an electronic reading device to Ms. Smith. The price of the device includes a 3G wireless connection that allows Ms. Smith to connect to Bookseller A's servers at any time and purchase e-books. Bookseller A, in turn, purchases the wireless bandwidth for the connection from Carrier B. In this instance, should we consider Ms. Smith to be the "user" of the service provided by Bookseller A?

[24] *Further Notice* at ¶76.

[25] *But see* Comments of Onstar in WC Docket No. 06-199 at 27 (filed July 6, 2012)(opposing adopting a broader definitional approach for machine-to-machine communications because it would give rise to substantial marketplace uncertainty and frustrate the development of emerging services through differing interpretations and ultimately litigation as to what is actually encompassed under the rule.)

[26] *Id.* at ¶89. Note that the Commission also asks how it should "interpret the statutory requirement in the definition of 'telecommunications' that the information transmitted must also be 'of the user's choosing," and what it means for the user to "specify" the "points" of transmission, as well as whether it would have to interpret the statutory requirement that the transmission must be "without change in the form or content of the information as sent and received." *Id.* at ¶¶90-92.

> Alternatively, is Bookseller A the "user" of the service provided by Carrier B? Under the former view, would Bookseller A be viewed as "providing telecommunications" to Ms. Smith, and therefore a contributor on that service? Or should Carrier B be viewed as the entity that is providing telecommunications to Bookseller A, and therefore the contributor? What would be the potential effects in other regulatory contexts if the Commission were to interpret the term "user" in a new way here?[27]

This example is similar to the situation that would exist if a utility were to rely on an interstate telecommunications provider to support some or all of its smart meter/smart grid device deployment. In that and other cases, utilities are a user rather than a provider of services, and they should not be required to contribute directly to USF.[28]

There are several reasons why the Commission should refrain from requiring utilities and CII to contribute directly to USF. First, treating utilities and CII as end users is consistent with how their telecommunications bills are actually paid. Utilities pay the carriers (including USF pass throughs) for their services, and they do not bill their electric customers for the use of their smart meters/smart grid devices. Utilities would not be able to readily bill their electric customers for USF fees for smart meters/smart grid devices the way that telecommunications carriers typically charge their customers.[29] Second, it would be extremely administratively cumbersome for utilities to complete the FCC forms and to comply with the regulations that apply to carriers. Utilities are already heavily regulated by multiple federal and state agencies without this additional and unnecessary requirement from the FCC. Third, and most importantly, the Commission should recognize the distinction between the PSTN and private networks such as those that support utility and CII operations, such as smart meters/smart grids. To the

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[27] *Id.*

[28] *See also* Comments of the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance at 34 (filed July 9, 2012)(stating that in the case of smart meter/smart grid M2M technology, "the homeowner or property manager would not be considered the user, because that individual neither specifies the ends of the transmission path nor the information transmitted; instead all such decisions are made by the energy supplier that installs the smart meter to transmit data of its choosing to and from the designated premises.")

[29] Because utilities do not charge for smart meters and smart grids, it would violate Section 254(d) to impose USF contributions that would force utilities to pay more in USF fees than they collect in revenues. *See Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434-35 (5th Cir. 1999), *citing, Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)(holding that it is arbitrary and capricious for the Commission to impose prohibitive costs that require contributors to contribute more in universal service payments than they will generate from interstate service.)

extent that these internal communications networks carry traffic within a utility, they do not benefit from, and thus should not bear the costs of supporting, the PSTN.[30] Thus, utilities should not be required to contribute to USF directly like carriers (including all of the reporting requirements), and instead should be treated as users of the service.

D. Impact on the Contribution Base

The Commission also asks about the additional contributors and the impact on the contribution base if it were to adopt its proposed broader definitional approach and whether those figures are likely to grow or shrink in the future. Similarly, it asks how those figures would vary depending on whether the Commission adopts an assessment methodology based on revenues, connections, numbers or some other alternative. Finally, it asks what services and providers would contribute under its proposed rule and to what extent they are already contributing today, as well as how this would differ using the either the service-by-service approach that is used today or the definitional approach that the Commission is proposing.[31]

Including machine-to-machine communications and smart meters/smart grid devices would have a very negative impact on these emerging industries and would only marginally increase the contribution base. While there are many smart meters/smart grid devices, there are few that use commercial service providers at all, let alone the PSTN. As noted above, most of smart meters/smart grids are supported by standalone private communications systems, which are not subject to USF. While the Commission is encouraging the use of commercial service providers to support smart meters/smart grid devices, there has been marginal growth in the use of commercial service providers thus far. That may change, if the

[30] *Id.* at 428-429 (stating that "Congress designed the universal service scheme to exact payments from those companies benefitting from the provision of universal service," and upholding Commission's decision to require that paging carriers to contribute to USF, because they directly benefit from a larger and larger network).

[31] *Id.*at ¶93. Note that the Commission also asks for input on the Commission's legal authority and the type and magnitude of likely benefits and costs of each of these variants of the suggested rule, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how they were calculated and an identification of all underlying assumptions. *Id.*at ¶94.

reliability of commercial service providers is improved so that commercial service providers can meet higher standards for smart meters/smart grid devices. Cost of service is also an important factor, and increased costs from USF fees could drive down demand by utilities for commercial services to support smart meters/smart grid devices. Worse, if the Commission were to impose USF obligations on utilities directly, including contribution requirements and other regulations, it would impose undue burdens on utilities and their customers which would far outweigh any benefits in terms of USF contributions.

Conclusion

Therefore, the Commission should exclude machine-to-machine communications and smart meters/smart grids from the USF contribution base. They do not meet the statutory definition of telecommunications and are not interstate services. It also would not serve the public interest to impose USF on this nascent industry, which is working to promote overarching national policy goals including economic recovery, energy independence and environmental quality, as well as national security. In any event, the Commission should not treat utilities and CII as "providers" of machine-to-machine communications and smart meters/smart grid devices. Utilities and CII are users of smart meters/smart grid devices, not providers; they use smart meters/smart grid devices to manage operations to ensure safe and efficient delivery of essential electric, gas and water services to the public at large.

Respectfully submitted,

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